On the *Minos*

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The *Minos* has come down to us as a Platonic work immediately preceding the *Laws*. The *Laws* begins where the *Minos* ends: the *Minos* ends with a praise of the laws of the Cretan king Minos, the son and pupil of Zeus, and the *Laws* begins with an examination of those laws. The *Minos* thus appears to be the introduction to the *Laws*. The *Laws* more than any other Platonic dialogue needs an introduction, for it is the only Platonic dialogue in which Socrates is not mentioned or which is set far away from Athens, in Crete. The *Minos* thus also appears to be entirely preliminary. Yet it is the only work included in the body of Platonic writings which has no other theme than the question "What is law?" and the answer to it. It could appear strange, and it ought to appear strange, that this grave question which is perhaps the gravest of all questions is, within the body of the Platonic writings, the sole theme only of a preliminary work. But we must remember that in Xenophon's Socratic writings Socrates never raises the question, "What is law?"; according to Xenophon, it was Socrates' ambiguous companion Alcibiades who raised that Socratic question in a conversation with Pericles while Socrates was absent. The strangeness is enhanced by the fact that Plato's Socrates raises his question concerning law, not as is his wont, after proper preparation, but abruptly; he seems to jump at an unsuspecting companion with his bald question. He thus brings it about

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that nothing accidental or particular—like the question of Socrates' own law-abidingness in the *Crito*—distracts our attention from the universal question in all its gravity. We are not even distracted by the name of the companion; that companion remains nameless and faceless; we perceive only what he says. Since no one else appears to be present at the conversation, the work could not carry as its title, as most Platonic dialogues do, the name of a participant in a Socratic conversation or of a listener to it: the name which is mentioned in the title is the name of a man of the remote past who is only spoken about in the conversation.

While the question with which Socrates opens the conversation is abrupt, it cannot be said to be unambiguous. It is not clear whether he asks the companion, "What in our opinion is law?" or "What is the law to which we (we Athenians [?]) are subject?" The first question might be called universal or theoretical, and the second question might be called practical or particular. The practical question is again ambiguous; it may refer to a whole legal order or to any particular law. While being distinct, the theoretical and the practical questions are inseparable from each other. One cannot know to which law one is subject without having some knowledge, however vague and dim, of law as such; one cannot know what law as such is without possessing at least a directive toward the law to which one is subject. For the time being Socrates makes his initial question unambiguous by limiting the conversation to the theoretical question. But the practical question is only driven underground: the dialogue ends with the suggestion that the law deserving the highest respect is the law, not of Athens, but of Crete.

Socrates illustrates the question "What is law?" first by the question "What is gold?" and then by the question "What is stone?" Gold is most valuable, and a stone may be entirely worthless. "Gold" is never used in the plural, whereas "stone" is; one cannot say "a gold" as one can say "a stone": there are wholes each part of which is a whole or complete, and there are wholes no part of which is complete. We are thus induced to wonder whether law, properly understood, is more like gold or more like stone. But regardless of whether any particular law or even any particular code can be said to be a whole, Socrates' question is concerned with a whole—the whole comprising all laws. Just as gold does not differ from gold in respect of being gold and stone does not differ from stone in respect of being stone, law does not differ from law in respect of being law. Does this mean that a bad law is as much law as a good law?

The companion's first answer to Socrates' comprehensive question is to the effect that the law is the whole consisting of whatever is "held" or whatever is established by law. Socrates convinces him by suitable parallels that just as in other cases what we may call the acts of the human soul are not the same as the things in which these acts issue, law as an act of the soul is not the same as that in which that act issues. Law is then so far from being something inanimate (like gold or stone) that it is an act of the soul: is it manifestation or science or is it finding (invention) or art? In his answer (the second and central answer to Socrates' comprehensive question) the companion does not meet the issue. He says that law is the decision of the city. He means by this that the law is not an act of the soul, but something in which certain acts of the soul issue. Yet it is now clear to him that law is the outcome of some act of the soul, whereas his first answer would have been compatible with the view that law is custom of which no one knows whence it came or, as one might say, which is not "made" but has "grown." Socrates rephrases the second answer in such a way as to make it an answer to the particular question which he had addressed to the companion: the act of the soul which is law has the character, neither of science nor of art, but of opinion; it is the city's opining about the affairs of the city.

A simple consideration suffices to show that this answer is insufficient. We assume that there is a connection between law and justice. Perhaps a man may be law-abiding without being just, but surely a lawless man is unjust. In a way law and justice seem to be interchangeable; hence law will be something high. But a city's opinions may be low. We are then confronted with a contradiction between two most audible opinions which are so audible because they are opinions of the city: the opinion that the law is the opinion of the city and the opinion that the law is something high. Socrates, without any hesitation and without giving any reason, chooses the second opinion and therewith tacitly rejects the opinion that the law is the opinion of the city. Since the opinions of the city are self-contradicting, even the best of citizens cannot simply bow to them. Law is indeed an opinion, according to Socrates; but he does not yet say whose opinion it is; for the time being he only says that it is a high opinion, hence a true opinion, and hence the finding out of what is. "Finding out," and hence law, appears to be between "finding" or art on the one hand and "manifestation" or science on the other.

Only one more step is needed in order to bring us to the third and final definition of law, the only definition proposed by Socrates: the

law wishes to be the finding out of what is. The last step is a step back. Socrates qualifies the apparent result according to which the law is the finding out of what is. He does not give a reason for his qualification, but the compelling reason comes to sight immediately afterward: if the law were the finding out (the having found out) of what is, and what is (what is without any admixture of nonbeing) is always the same, law would be simply unchangeable, and hence all or most of the things which we call laws and which differ from time to time and from place to place would not be laws at all. But if law only wishes, or tends, to be the finding out of what is, if no law is necessarily the finding out of what is, there can be an infinite variety of laws which all receive their legitimation from their end: The Truth. The companion fails to grasp the qualification; he believes that Socrates has left it at suggesting that law is the finding out of what is. Given the fact, he argues, that we constantly find out the same things as things which are (sun, moon, stars, men, dogs, and so on), all men should always use the same laws, and they manifestly do not. Socrates replies to the effect that the variety in question is due to the defects of human beings and does not affect the law itself. The implied distinction between the infallible law and the fallible human beings suggests to us that law is indeed an act of the soul, but perhaps not necessarily of the human soul. Besides, Socrates regards it as an open question whether human beings do use different laws at different places and in different times. He thus compels the companion to prove the fact that laws vary. But when he has completed that proof, Socrates seems to reject it as an irrelevant "long speech." In brief, Socrates tries to be silent about the variety of laws—about a fact which had induced him to say that the law wishes to be—that is, is not necessarily—the finding out of what is.

The companion proves the variety of laws by the examples of laws concerning sacrifices and burials; the examples concern sacred things. They confirm to some extent Socrates' definition of law; they show that at any rate the most awe-inspiring laws are based on more or less successful attempts to find out what is in the highest sense, namely, the gods and the soul and hence what the gods demand from men and what death means. The examples show the great difference between present Athenian practice and the practice of the earliest past, of the age of Kronos, as it were. They seem to show that in the beginning men were savage, whereas in present-day Athens they are gentle; hence present-day Athenian laws will be superior to the oldest laws,

Greek or barbarian. This finding obviously presupposes that laws differ temporally and locally. Perhaps Socrates treats the changeability of law in so gingerly a manner because it is the premise of the finding mentioned—of a finding with which he is not satisfied.

Socrates attempts now to bring about a meeting of minds with the companion by means of short speeches, or short questions and answers. The companion prefers to answer Socrates' questions rather than to question Socrates. He grants to Socrates that people everywhere and always hold that the just things are just, the noble things are noble, the unjust things are unjust, and the base things are base—just as all people, regardless of whether they hold it lawful or impious to bring human sacrifices, hold that the things that weigh more are heavier and the things that weigh less are lighter. The final result of this reasoning confirms the unqualified definition of law according to which law does not merely wish but is the finding out of what is. The companion, who through his own fault is compelled to give short and rather quick answers and cannot, as we can, read and reread Socrates' questions, is unable to lay bare the sophism to which Socrates draws our attention while committing it: the universal agreement regarding the opposition of the just or noble things to the unjust or base things does not establish universal agreement as to the content of "the just and the noble." Nevertheless, the companion remains entirely unconvinced, for Socrates' result manifestly contradicts what the companion himself observes with his own eyes in Athens every day, namely, that "we" (that is, we Athenians) unceasingly change the laws.

What one may call Socrates' second proof of his definition of law is not a mere repetition of the first. In the second proof Socrates tacitly contrasts "the just things" and "the heavier things"; he thus draws our attention to two questions: (1) Can justice be a matter of degree as is weight? (2) Is disagreement regarding weight as widespread and as profound as disagreement regarding justice? Besides, the first proof was still related to the opinion that law is the opinion of the city; that opinion plays no role in the second proof. We are thus being prepared for the suggestion that law is the mental act, not of the city (that is, of the assembly of the citizens) or of the citizen, but of men of a different description.

Reading on, we observe that what we have called Socrates' second proof of his definition of law is in fact the first section of his tripartite defense of his definition of law; that tripartite defense forms the

second or central part of the dialogue. At the beginning of the central section of the central part, Socrates abruptly turns to the writings of men who possess an art. We can discern the reason for the apparent change of the subject. Socrates had raised the question whether law is a science or an art. He assumes now that law is an art. He seems to justify this assumption as follows. Laws are prescriptive writings; but the arts, being a kind of perfect, final, fixed knowledge which is the same for all, necessarily find their appropriate expression in prescriptive writings; hence laws belong to the same genus as the arts. This reasoning suffers from an obvious flaw: it is not necessary for either arts or laws to present themselves in writings. For instance, the farmers, that is, the experts in farming, do not necessarily compile or even read writings on farming.

If laws belong to the same genus as the arts and are therefore prescriptive writings composed by experts of a certain kind, namely, the kings (or statesmen), there is no reason why laws should be the work of the city or of Greeks: neither citizens nor Greeks are, as such, experts in the kingly art. The prescriptions ordinarily called "laws" may differ from place to place; but regarding things of which men possess knowledge, all knowers agree, as Socrates asserts, regardless of where they live or whether they are Greek or barbarians. When the companion emphatically assents to this assertion, Socrates praises him for the first time. Furthermore, the prescriptions ordinarily called "laws" may differ from time to time; but where there is knowledge, there is no change of thought; or vice versa, where there is change of thought, there is no knowledge; the frequent change of "laws" for which Athens was so notorious is then a clear proof that the Athenian legislature is ignorant, and hence its findings or decisions do not deserve to be called laws or to be respected as laws; in fact those "laws" must be particularly bad. The companion does not object to this tacit result; in other words, he has now become convinced of the truth of Socrates' definition of law or, more precisely, of the fact that law is an art. It looks as if Socrates has succeeded in appealing from his pro-Athenian prejudice to his antidemocratic prejudice. We on our part realize that the answer to the theoretical question "What is law?" has supplied at least a negative answer to the practical question "What is the law to which we are subject?" In spite of the agreement reached, there remains at least one difference between Socrates and the companion—a difference which comes to light in the very center of the dialogue: the companion is more certain

than Socrates that cookery is an art; Socrates' uncertainty regarding the status of cookery is matched in the *Minos* only by his uncertainty regarding the status of soothsaying, that is, of the art by which men claim to know what goes on in the minds of the gods. The companion is also more certain, at least to begin with, that knowers agree always and everywhere than that experts agree always and everywhere; perhaps he knew in advance that good legislation requires knowledge of the subject matter to be regulated by law, but was doubtful that that knowledge must be expert knowledge: knowledge of the pertinent facts as distinguished from their causes may be sufficient for good legislation.

In the last section of the central part Socrates proves that law is an art by assuming that art consists in distributing properly the parts of some whole to the parts of another whole—of a herd, as it were. In some cases the distributor assigns to each member of the herd the same quantity of the whole to be distributed as to every other member. In other arts, however, the distributor must consider the fact that the "herd" consists of qualitatively different parts or that different things are good for different parts or different individuals. What human beings call laws would then be the distributing, say, of punishments and rewards to the members of the city or in the best case the distributing of the proper food and toil to the souls of human beings by the king. The king assigns to each the work best for him, that is, most conducive to his becoming a good man: he does not treat the human beings whom he rules as parts of a herd. But if to be a good man is the same as to be a good citizen, a good member of the city, one can also say that the king assigns each man to the place or the work for which he is best fitted. In this section writings are no longer mentioned: assigning to each soul what is good for it cannot be done well except orally, by the king on the spot. It would be more simple to say that such assigning cannot be done well by any law. Socrates prefers to say that it is best done by the best laws, the laws of the king. He thus implies that laws ought to be infinitely variable. Whereas according to the preceding argument, law as art entails that law must be always and everywhere the same and hence that at least almost all so-called laws do not deserve to be called laws, according to the present argument, law as art entails that law must be as variable as the individuals and their individual situations and hence that no so-called law deserves to be called law. On the other hand, by now speaking of the best laws Socrates restores the common view accord-

ing to which certain decisions of ignoramuses or of assemblies of ignoramuses may also be regarded and respected as law. Yet the best laws prove to be unwritten laws of a certain kind—not indeed the unwritten laws of unknown origin which say the same things always and everywhere, but certain acts of a wise soul.

Socrates had opened the central part of the dialogue with the suggestion that there is universal agreement regarding the just and the noble things. This suggestion taken by itself could be thought to refer to the unwritten laws which are always and everywhere acknowledged to be laws and which for this reason cannot be the work of human legislators (Xenophon *Memorabilia* IV.4.19). But the *Minos* is silent about the unwritten laws thus understood. One may say that in this dialogue Socrates turns from unwritten laws of unknown origin first to written laws and then to unwritten laws of known origin, viz. the distributing by the king of the proper food and toil to each man's soul.

The third and last part of the *Minos* deals with the laws of Minos. The transition is not explained and is therefore abrupt. We are supposed to have learned what law is and what makes a law good; we must then seek the best laws. What we have learned may have made us doubtful whether the best laws can be of human origin. The lesson conveyed through the last part of the dialogue may provisionally be said to be that the best laws are the laws of Minos because Minos received them from the highest god, his father Zeus. What must surprise us is that the laws of Zeus do not consist in assigning to each man's soul the food and toil best fitted for him, and besides that Zeus did not communicate his laws to all men: he communicated them only to a single privileged man, to Minos, whom he appointed also as the highest judge of the dead (*Gorgias* 523e–524a). Perhaps Zeus did not wish to rule directly so that man, within certain limits left to himself, would be compelled or enabled to choose as long as he lives. Furthermore, if Zeus had communicated his law to men directly, men would necessarily be able to know the thoughts of Zeus, that is, soothsaying would necessarily be a genuine art; but there is no need for soothsaying if there is an intermediary between Zeus and men, an intermediary like Minos who, as participating in divinity, does not need a human art to be aware of the thoughts of his father and as participating in humanity can communicate his father's thoughts to men just as human legislators communicate their laws to men.

Socrates leads up to the laws of Zeus by speaking first not simply

of the best laws but of laws (prescriptive and distributive acts) both good and ancient regarding flute playing. As we could have learned from the companion's long speech, the good is in no wise the same as the ancient: certain ancient laws commanded human sacrifices to the then highest god. But an ancient law which is now still in force approximates the unchangeability which appeared to be a mark of goodness. Law must be not only good or wise but also stable: could the best laws be laws which are both wise and stable? The example of flute playing—of an art which reminds most forcibly of speech and yet which cannot be practiced while one speaks—draws our attention to the quality of the divine as distinguished from the ancient and the good. The flute songs invented by certain ancient barbarians are most divine because they alone move and bring to light those who are in need of the gods; yet the divine character of those flute songs explains why they still retain their force. Not everything ancient is divine, but perhaps everything divine necessarily lasts for a very long time. Could the stability of the best laws be due to the unspeakable or mysterious power of the divine which rules chance and may rule it in favor of the good? We are thus prepared for Socrates' suggestion that the oldest Greek laws—the laws which Minos gave to his fellow Cretans, rather than, for instance, the Egyptian laws or the Lacedaemonian laws which were popularly traced to Apollo, the victor over Marsyas and his art of flute playing—combine the qualities of oldness, goodness, and divinity.

The companion, who has been brought to admit that law is an art and hence that the Athenian laws are either not laws at all or in the best case only bad laws, refuses to bow to the Cretan laws. He does not deny that Minos was an ancient king of divine origin, but he denies that he was a good king. Socrates tells him that he is under the spell of an Athenian myth; he sets out to liberate him from the spell of the Athenian myth as he has liberated him from the spell of the Athenian laws. In a speech whose length surpasses by far the length of the companion's long speech, Socrates appeals from the Athenian tragic poets who had originated the myth, according to which Minos was bad, to Homer and Hesiod, the most ancient poets, and thus proves that Minos and hence his laws are good. From Homer, Socrates has learned that Minos was the only one of the children of Zeus educated by Zeus in his art, the noble art of sophistry, which may be identical with the legislative art and certainly is identical with the kingly art; the education took place in a cave, if in the cave of Zeus. Law is so far from

being the opinion of the city that it is, or is based upon, an art, the highest art, the art of the highest god. In order to judge of Socrates' contention, one would have to consider in their contexts the few Homeric verses to which he appeals; one would have to see whether they express the view of Homer or of a Homeric character; in the latter case one would have to consider whether that character can be presumed to possess both the knowledge and the truthfulness required in a matter of such importance. As Socrates indicates, the decisive Homeric passage could be thought to mean that Minos associated with his father Zeus, not in speeches devoted to education in virtue, but in drinking and playing. He disposes of the suggestion that Minos associated with Zeus in drinking to the point of drunkenness by a consideration which, it must be admitted, is not free from begging the question. He does not dispose of the suggestion that Zeus and Minos associated for other purposes which have nothing in common with education to virtue. It is not advisable to speculate on the alternatives which are not mentioned. It suffices to say that, as Socrates makes clear at the very end, the whole conversation is based on ignorance of the function of the good legislator: the whole praise of Minos' laws must be reconsidered, as it is in the *Laws*.

The audible proof of Minos' goodness is balanced by an inaudible doubt of that goodness. The difference between proof and doubt corresponds to the difference between two Socratic exhortations. The proof is preceded by an exhortation to piety, for Socrates challenges the Athenian myth regarding Minos in the name of piety: it is impious for a human being to speak ill of Minos, that is, a hero who was the son of Zeus; the god may resent this more than if one speaks ill of him. The proof is followed by an account of how the myth of Minos' badness arose: Minos waged a just war against Athens, defeated Athens, and compelled the Athenians to pay "that famous ransom": to send fourteen young Athenians at regular intervals to Crete as a kind of human sacrifice; hence Minos became hateful to "us," the Athenians, and we take our revenge on him through the tragic poets who present him as bad; this revenge is effective because tragedy is in its way as pleasing to the people and as apt to lead the soul as flute playing itself. While stating these things, Socrates addresses his second exhortation to the companion—the exhortation to be on his guard, not against acts of impiety, but against incurring the hatred of any patriotic poet. As is shown by the example of Minos, one cannot comply in all cases with both exhortations, although each exhortation

demands compliance in all cases. While complying with his first exhortation Socrates was compelled to praise most highly the most ancient enemy of Athens to whom he will owe, if indirectly, the postponement of his execution decreed by the city of Athens (cf. *Phaedo* 58a–c).

The end of the dialogue renders doubtful its chief result. This ending is not entirely unexpected, for the suggestion that Minos' laws are the best laws implies the view that law can be the finding out of what is and hence can be unchangeable, whereas Socrates' definition of law implies the view that law can never be more than the attempt to find out what is and hence is necessarily changeable. According to the first view, men can be experts—can possess full knowledge—regarding the matter with which law is concerned; according to the second view, men are ignorant regarding that matter. One can resolve this difficulty by suggesting that while men cannot be experts regarding that matter, they necessarily are knowers of it. The fundamental difficulty can also be stated as follows: law is always and everywhere the same and therefore one; law must be as variable as the needs of individuals and therefore infinitely many. If one accepts the second view, one reaches this conclusion: whereas in the case of man, justice, dog, the one (man as such, justice as such, dog as such) is of higher dignity than the many (the individual men, just things, dogs); in the case of law the one (the universal rule) is of lower dignity than the many (the assignment of the proper food and toil to each man's soul) and in fact spurious.

We could touch only on some of the things which the reader of the *Minos* must consider much more carefully than we have been able to do here. For instance, we did not speak of the circumstances in which Socrates and the companion address each other by name or in other ways. The companion addresses Socrates eight times by name and never in any other way. Socrates never addresses the companion by name (which does not necessarily mean that he does not know his name), but addresses him three times by an expression which we may render "you excellent one." In conversations between two men one uses the name of the other especially in two cases: when the other says something apparently absurd and one tries to call him back to his senses, and when one is pushed to the wall by the other and begs for mercy. Socrates addresses the companion twice as "you excellent one" immediately after the companion has addressed him as "O Socrates"; the first time the companion was dissatisfied with So-

crates' praise of Minos, and the second time the companion failed to understand how the good Minos could have acquired the reputation of being bad. As for the character of the companion, we suspect that he was no longer quite young, that he was concerned with civic fame, that he was what one might call free from prejudices, and that he believed that one can be just while being savage and unaccommodating.

The *Minos* raises more questions than it answers. In order to see how the thoughts suggested by the *Minos* are best continued, one must turn to the other dialogues. It is of little use to look up parallels in the other dialogues to this or that passage of the *Minos,* for the meaning of the parallels depends on their contexts, that is, on the whole dialogues within which they occur. One must then study the other dialogues. With every other dialogue a new land comes to sight; the experience resembles that of one's becoming aware of an unexpected turn of the road at what seemed to be the end of the road. The dialogue most akin to the *Minos* is the *Hipparchus.* The *Minos* and the *Hipparchus* are the only dialogues between Socrates and a single nameless companion. They are the only dialogues whose titles consist of the name of someone who is not present at the conversation but was dead a long time before the conversation; their titles resemble the titles of tragedies. They are the only dialogues which open with Socrates' raising a "what is" question. While the *Minos* begins with the question "What is law?", the *Hipparchus* begins with the question "What is the quality of gain-loving? Who are the gain-loving ones?" If the beginning of the *Minos* corresponded strictly to the beginning of the Hipparchus, it would read: "What is the quality of lawful? Who are the law-abiding ones?" If not law itself, surely law-abidingness is generally praised, while love of gain is generally blamed: the *Minos* need not vindicate law-abidingness and law, while the *Hipparchus* is devoted to vindicating love of gain. While the *Minos* may be said to end in the praise of the Cretan legislator Minos, the *Hipparchus* may be said to culminate in the praise of the Athenian tyrant Hipparchus. The vindication of the love of gain is the vindication of tyranny, if the tyrant is the most outstanding lover of gain (cf. Aristotle *Politics* 1311a 4–11). Tyranny is the opposite of law or rule of law; the *Minos* and the *Hipparchus* together deal with the two fundamental alternatives. The connection which we indicated between "love of gain" and "Hipparchus" is not made explicit in the *Hipparchus.* Hipparchus is mentioned there because a saying of Hip-

parchus throws light on the conversational situation. Socrates charges the companion with trying to deceive him, and the companion charges Socrates with in fact deceiving him. (No such charge is made in the *Minos*.) Thereupon Socrates quotes, after proper preparation, the saying of Hipparchus "Do not deceive a friend." The saying does not disapprove of deceiving people who are not friends. From the context it would appear that not deceiving friends is a part of justice or, in other words, that justice consists in helping one's friends and hurting one's enemies. Love of gain is generally despised because it seems inseparable from deception. However this may be, Socrates praises the Athenian tyrant Hipparchus as a good and wise man, the great educator of the Athenians in wisdom, whose reign resembled the age of Zeus's father Kronos. If we put the *Minos* and the *Hipparchus* together, we become haunted by the suggestion that an Athenian tyrant rather than the Athenian law (and even than the Cretan law) was good and wise. Accordingly, just as in the *Minos* Socrates explicitly rejects the Athenian myth regarding Minos, in the *Hipparchus* he takes issue with what "the many" in Athens say about Hipparchus: Harmodios and Aristogeiton, who were magnified as liberators by the people of Athens, murdered Hipparchus for no other reason than because they were envious of his wisdom and his effect on the young; the nonlegal murder of Hipparchus foreshadows the legal murder of Socrates.

The *Hipparchus* questions the view that love of gain is simply bad, just as the *Minos* may be said to question the view that law is simply good: a law may be bad just as gain may be good. These facts recommend the view that both law and gain by themselves are neutral just as man may be said to be neutral: a high-class man is not more nor less a man than a low-class man (*Hipparchus* 230c). But just as the *Minos* leads up to the view that a bad law is not a law, the *Hipparchus* leads up to the view that bad gain is not a gain. With what right do we then say of a low-class human being that he is nevertheless a human being?